Tina I. Mangarpan, Esq., Bar No. 117898
FORD, WALKER, HAGGERTY & BEHAR
One World Trade Center
Twenty-Seventh Floor
Long Beach, California 90831-2700
(562) 983-2500; (562) 983-2555 Fax

FILED
08 AUG 21 PM 1:59
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: [signature] DEPUTY

Attorneys for Defendant,
**COLONY CONSOLIDATED, LP**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| LENETTE BARKER,<br>Plaintiff,<br>vs.<br>HIHC, LLC, A California Limited Liability Company; COLONY CONSOLIDATED, L.P., A Limited Partnership, and DOES 1 through 100, inclusive,<br>Defendants. | Case No. '08 CV 1547 LAB RBB<br>**NOTICE TO ADVERSE PARTY OF REMOVAL TO FEDERAL COURT** |

TO PLAINTIFF, LENETTE BARKER, AND TO HER ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that a Notice of Removal of this action was filed in the United States District Court for the Southern District of California on August 21, 2008.

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A copy of the said Notice of Removal is attached to this Notice, and is served and filed herewith.

Dated: August 20, 2008

FORD, WALKER, HAGGERTY & BEHAR

BY: [signature]
TINA I. MANGARPAN, ESQ.
Attorneys for Defendant,
COLONY CONSOLIDATED, LP

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(PROOF OF SERVICE BY MAIL – F.R.Civ.P. 5)
BARKER v. HIHC, LLC, et al.
USDC SOUTHERN DISTRICT

UNITED STATES DISTRICT COURT )
CENTRAL DISTRICT OF CALIFORINA )
)

I am employed in the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is: One World Trade Center, Twenty-Seventh Floor, Long Beach, California 90831-2700

On August 21, 2008, I served the within: **NOTICE TO ADVERSE PARTY OF REMOVAL TO FEDERAL COURT**

on the interested parties in said action,

____ by personally delivering it to the person(s) indicated below in the manner as provided in FRCivP5(b);

_X_ by depositing it in the United States Mail at Long Beach, California, in a sealed envelope with the postage fully prepaid to the following;

Mark D. Potter, Esq.
Russell C. Handy, Esq.
CENTER FOR DISABILITY ACCESS, LLP
100 East San Marcos Blvd., Suite 400
San Marcos, CA 92069-2988
(760) 480-4162; (760) 480-4170 Fax

____ I hereby certify that I am a member of the Bar of the United States District Court, Central District of California.

_X_ I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

_X_ I hereby certify under the penalty of perjury that the foregoing is true and correct.

Executed on August 21, 2008, at Long Beach, California.

[signature]
Barbara A. Ezra

Tina I. Mangarpan, Esq., Bar No. 117898
FORD, WALKER, HAGGERTY & BEHAR
One World Trade Center
Twenty-Seventh Floor
Long Beach, California 90831-2700
(562) 983-2500

Attorneys for Defendant, COLONY CONSOLIDATED, LP

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| LENETTE BARKER,<br>Plaintiff,<br>vs.<br>HIHC, LLC, A California Limited Liability Company; COLONY CONSOLIDATED, L.P., A Limited Partnership, and DOES 1 through 100, inclusive<br>Defendants. | No.<br><br>**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(b) FEDERAL QUESTION** |

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendant, COLONY CONSOIDATED, LP, hereby removes to this Court the state court action described below.

1. On July 16, 2008, an action was commenced in the Superior Court of the State of California, County of San Diego, entitled LENETTE BARKER v. HIHC, LLC, A California Limited Liability Company; COLONY CONSOLIDATED, L.P., A Limited Partnership, Does 1 through 100, Inclusive, as Case Number 37-2008-00087782-CU-CR-CTL. A copy of the Complaint is attached hereto as Exhibit "A."

2. The first date upon which defendant received a copy of said Complaint was July 23, 2008.

3. This action is a civil action of which the Court has original jurisdiction under 28 U.S.C. Section 1331, and is one which may be removed to this Court by defendant pursuant to the provisions of 28 U.S.C. Section 1441(b) in that it arises under statutes of the United States: specifically, the Americans with Disablities Act of 1990, Title III, 42 U.S.C.S. 12101, et seq.

4. There are no other named defendants to defendant's knowledge that have been served with the Summons and Complaint. The defendants identified as "Does 1 through 100" in plaintiff's Complaint are merely fictitious parties against whom no cause of action can be validly alleged.

5. This notice is filed within thirty (30) days after defendant's initial notice of this action.

6. Following the filing of this notice with this Court, written notice of the filing of same will be provided to all attorneys of record, as required by law.

7. Following the filing of this notice with this Court, a true and correct copy of same will be filed with the Clerk of the Superior Court of the State of California, County of San Diego, as required by law.

8. Attached as Exhibit "A" to this notice is a true and legible copy of all process, pleadings, orders and other papers or exhibits of every kind on file in the Superior Court of the State of California, County of San Diego.

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9. No previous application for relief sought herein has been made to this Court or any other Court.

Dated: August 20, 2008

FORD, WALKER, HAGGERTY & BEHAR

BY: [signature]
TINA I. MANGARPAN, ESQ.
Attorneys for Defendant,
COLONY CONSOLIDATED, LP

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(PROOF OF SERVICE BY MAIL – F.R.Civ.P. 5)
BARKER v. HIHC, LLC, et al.
USDC SOUTHERN DISTRICT

UNITED STATES DISTRICT COURT )
CENTRAL DISTRICT OF CALIFORINA )

I am employed in the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is: One World Trade Center, Twenty-Seventh Floor, Long Beach, California 90831-2700

On August 21, 2008, I served the within: **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(b) FEDERAL QUESTION** on the interested parties in said action,

____ by personally delivering it to the person(s) indicated below in the manner as provided in FRCivP5(b);

_X_ by depositing it in the United States Mail at Long Beach, California, in a sealed envelope with the postage fully prepaid to the following;

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_X_ I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

_X_ I hereby certify under the penalty of perjury that the foregoing is true and correct.

Executed on August 21, 2008, at Long Beach, California.

Barbara A. Ezra

# EXHIBIT "A"

CIVIL

2008 JUL 15 P 12:26

CENTER FOR DISABILITY ACCESS, LLP
MARK D. POTTER, ESQ., SBN 166317
RUSSELL C. HANDY, ESQ., SBN 195058
100 East San Marcos Blvd., Suite 400
San Marcos, CA 92069-2988
(760) 480-4162
Fax (760) 480-4170

Attorney for Plaintiff, LENETTE BARKER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

LENETTE BARKER,

Plaintiff,

v.

HIHC, LLC, A California Limited Liability Company; COLONY CONSOLIDATED, L.P., A Limited Partnership, and DOES 1 through 100, inclusive

Defendants.

Case No.: 37-2008-00087782-CU-CR-CTL

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATIONS OF:** AMERICAN'S WITH DISABILITIES ACT; UNRUH CIVIL RIGHTS ACT; CALIFORNIA DISABLED PERSONS ACT; NEGLIGENCE

**DEMAND FOR JURY**

Plaintiffs LENETTE BARKER complains of Defendants HIHC, LLC, A California Limited Liability Company; COLONY CONSOLIDATED, L.P., A Limited Partnership, and DOES 1 through 100, inclusive, (hereinafter referred to as "Defendants") and alleges as follows:

**PARTIES:**

**1.** Plaintiff is a California resident with physical disabilities. She suffers from Multiple Sclerosis and requires a wheelchair for mobility.

**2.** Defendants are or were at the time of the incident the owners and operators and/or lessors and lessees of the Hotel located at 631 Camino Del Rio South, San

Diego, California.

3. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including DOES 1 through 100, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and DOES 1 through 100, inclusive, are ascertained

**FACTUAL ALLEGATIONS:**

4. The Hotel is a facility open to the public, a place of public accommodation, and a business establishment.

5. The Plaintiff stayed with family members at the Hotel March 12 and 13, 2008.

6. During her visit, the Plaintiff encountered various violations of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations, including, but not limited to, the accessible rooms in the Hotel were not dispersed among the various classes of sleeping accommodations to provide a range of options applicable to room sizes, costs, amenities provided, and the number of beds provided.

7. Naturally, Plaintiff BARKER was frustrated, angry and/or vexed as a result of encountering these conditions, these violations of her civil rights, and the lack of safe, convenient and accessible facilities. Although these injuries are modest in scope and did not result in any loss of wages or economic damage or medical care or attention, the continued violation of the Plaintiff's civil rights by these defendants and the highly unpleasant emotional distress caused by such unlawful treatment is attributable to the actions or inactions of the defendants and plaintiff seeks redress from these defendants

for such injury.

8. Plaintiff would like to return and patronize the Defendants' Hotel; however, the Plaintiff is unable to use the Hotel on a "full and equal" basis until the Hotel is brought into compliance with the provisions of the Americans with Disabilities Act Accessibility Guidelines and state accessibility law as pled herein. Plaintiff has been and currently is being deterred from returning and patronizing the Defendants' Hotel on a full and equal basis.

**I. FIRST CAUSE OF ACTION:** VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 51-53)

9. The Defendants are persons who either own, operate, lease or lease to a place of public accommodation. As such, the Defendants are required to (1) ensure that all construction, alteration, or modification is barrier free and complies with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations (aka "California Building Code"); and/or (2) remove all existing barriers where such removal is "readily achievable." The Defendants have failed to meet these obligations. The existence of readily achievably removed barriers and barriers in violation of the ADAAG and/or California Building Code, including, but not limited to, the accessible rooms in the Hotel were not dispersed among the various classes of sleeping accommodations to provide a range of options applicable to room sizes, costs, amenities provided, and the number of beds provided, is unlawful and has resulted in the defendants' failure to provide full and equal accommodations, advantages, facilities, privileges and/or services to the Plaintiffs.

**II. SECOND CAUSE OF ACTION:** VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 51-53)

10. The Defendants are persons who either own, operate, lease or lease to a place of public accommodation or business establishment. As such, the Defendants are required to (1) ensure that all construction, alteration, or modification is barrier free and

complies with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations (aka "California Building Code"); and (2) remove all existing barriers where such removal is "readily achievable." The Defendants have failed to meet these obligations. The Defendants intended the physical and architectural condition of their property. The existence of readily achievably removed barriers and barriers in violation of the ADAAG and/or California Building Code, including, but not limited to, the accessible rooms in the Hotel were not dispersed among the various classes of sleeping accommodations to provide a range of options applicable to room sizes, costs, amenities provided, and the number of beds provided, is unlawful and has resulted in the defendants' failure to provide full and equal accommodations, advantages, facilities, privileges and/or services to the Plaintiff.

11. The acts alleged above, which form the basis of the Plaintiff's discrimination claim, are intentional acts.

## III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA DISABLED PERSONS ACT (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 54-54.8)

12. The Defendants are persons who either own, operate, lease or lease to a place of public accommodation or a facility open to the public. As such, the Defendants are required to (1) ensure that all construction, alteration, or modification is barrier free and complies with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations (aka "California Building Code"); and (2) remove all existing barriers where such removal is "readily achievable." The Defendants have failed to meet these obligations. The existence of readily achievably removed barriers and barriers in violation of the ADAAG and/or California Building Code, including, but not limited to, the accessible rooms in the Hotel were not dispersed among the various classes of sleeping accommodations to provide a range of options applicable to room sizes, costs, amenities provided, and the number of beds provided, is unlawful and has resulted in the defendants' failure to

provide full and equal accommodations, advantages, facilities, privileges and/or services to the Plaintiff.

**IV. FOURTH CAUSE OF ACTION:** NEGLIGENCE (On behalf of Plaintiff and Against All Defendants)

**13.** The Defendants had a general duty and a duty arising under the Americans with Disabilities Act and the Unruh Civil Rights Act and California Disabled Persons Act to provide safe, convenient, and accessible facilities to the Plaintiffs in the running of their Hotel. Their breach of this duty, as alleged in the preceding paragraphs, has caused injury and damage as alleged above.

**PRAYER:**

Wherefore, Plaintiff prays that this court award damages and provide relief as follows:

**1.** For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. **Note:** the Plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under that section.

**2.** Damages under the Unruh Civil Rights Act and/or the California Disabled Persons Act. **Note:** A Defendant cannot be held liable for damages under both the Unruh Civil Rights Act and the California Disabled Persons Act and the Plaintiff will make an election at trial depending upon the evidence amassed.

**3.** Reasonable attorneys' fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ. Proc. § 1021.5.

Dated: July 11, 2008 CENTER FOR DISABILITY ACCESS, LLP

By: ____________________
MARK D. POTTER
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: July 11, 2008 CENTER FOR DISABILITY ACCESS, LLP

By:____________________________
MARK D. POTTER
Attorneys for Plaintiff